

BROWN MANUF'G Co. v. BUFORD and others.

(Circuit Court, N. D. Illinois. August 4, 1884.)

PATENTS FOR INVENTIONS—PATENT No. 190,816—CLAIMS 1 AND 2—INFRINGEMENT.

The defendant's cultivator compared with patent No. 190,816, sustained in *Brown Manuf'g Co. v. Deere*, ante, 709, and held, that the first and second claims thereof are infringed by defendant.

In Equity.

A. W. Train and George H. Christy, for complainant.

West & Bond and Coburn & Thacher, for defendant.

BLODGERT, J. In this suit the defendant was charged with the infringement of letters patent No. 190,816, dated May 15, 1877, issued to William P. Brown, for an improvement in couplings for cultivators. I have already discussed, in the case of the *Same Complainant* against *Deere & Co.*, ante, 709, all the questions made in this case except that of infringement. In this case the defendant is charged with infringing the first and second claims of this patent, which are as follows:

"(1) The pipe-box provided with a projection adapted to co-operate with a spring, weight, or the draught, to rock the said pipe-box against or with the weight of the rear cultivators or plows, substantially as and for the purpose described. (2) The combination, with the crank-axle and the gangs or plows, of the pipe-box, having arm, M, the spring, N, attached to the main frame, the head, I, and the stirrup, G, or its equivalent, having brackets, H, and pivot-bolt, b, and fastened to the pipe-box, substantially as and for the purpose described."

I find in the defendant's cultivator a pipe-box substantially the same in its function and operation as that provided in complainant's patent, to which I also find a plow attached by means of a bracket cast upon and as a part of the pipe-box; and this bracket seems to me in every particular to take the place and be the equivalent of the stirrup, G, shown in the complainant's patent. It performs the same function in the mechanism, and does in every particular the same work as the complainant's stirrup. The plow has, by means of the pipe-box, and the bracket or stirrup and coupling-pin, the same side and vertical motion which are given in the complainant's patent, and which are the purpose and object of this complainant's device. I also find a projection, not cast upon and made an integral part of the pipe-box, as is complainant's projection, M, but a vertical projection which is rigidly attached to the end of the pipe-box, and performs the same function, and operates in the same manner and for the same purpose, in connection with a spring, as the arm or projection attached to the complainant's pipe-box. The mere fact that this projection is constructed separately from the pipe-box and then rigidly attached thereto, does not, it seems to me, in any degree justify the defendant in the use of this device. It seems to me a clear

and palpable infringement of that portion of the complainant's patent which provides for an auxiliary force with which to aid in lifting the rear of the plows out of the ground. The curved lever of the defendant is in all its essential functions but the projection, M, of the complainant's patent, and I cannot see that it performs any other or different function in the defendant's organization from what would be performed by the complainant's arm, M, in the same organization.

There will, therefore, be a finding that the defendants infringe the first and second claims of the plaintiff's patent, and a decree for an accounting and injunction.

STEPHENSON v. THE FRANCIS.

(District Court, S. D. New York. September 16, 1884.)

1. **MARITIME LIEN—SUPPLIES—CHARTER—PART OWNERS IN DIFFERENT STATES.**
Where a ship is run by charterers, being owners *pro hac vice*, their residence only is regarded in determining the ship's "home port," and the presumptions of personal credit in regard to supplies furnished.
2. **SAME—SUPPLIES—WHERE FURNISHED.**
If there are several equal co-owners, general or special, resident in different states, no lien will arise for supplies furnished in the state of the known residence of either.
3. **SAME—PERSONAL CREDIT—IMPLIED LIEN.**
A known owner obtaining supplies on his personal order in a foreign port, not being master, deals presumptively on his personal credit only, and no lien will be implied unless the libellant satisfies the court, from the negotiations or the circumstances, that there was a common understanding or intention to bind the ship.
4. **SAME—PRESUMPTION—CHARGE ON LIBELLANTS' BOOKS.**
This presumption is stronger in the case of a charterer known to be bound to pay for the supplies in person, and not to charge the ship; and where material-men, knowing the above facts, furnished supplies to such a charterer on his own application, who was known to them for 25 years previous, but having no definite credit with them, and no reference was made to the ship as a source of credit, and the master gave notice that the ship was not to be bound, and the ship was not in any port of distress, and the libellants being agents to collect the freights, and other circumstances negativing a reliance on the ship, *held*, that supplies to a small amount, for the vessel's ordinary trips, at the commencement of season's business, were furnished on the charterer's credit only, notwithstanding a charge on the libellants' books to the vessel and owners, and without reference to the question of the *power* of a charterer to bind the ship for supplies, contrary to the stipulations of the charter.
5. **SAME—KNOWLEDGE OF OBLIGATION OF CHARTERERS—NOTICE.**
The libellants, knowing the charterer's obligation to the general owners to obtain ordinary supplies on his own responsibility only, were bound in good faith to make known their dissent when he applied for supplies, if they meant to hold the ship; not having dissented then, they must be held to have acquiesced in his application in conformity with his obligation, and are estopped from afterwards asserting the contrary.
6. **SAME—NOTICE TO MASTER—SUBSEQUENT SUPPLIES.**
Notice by the master is one of the terms on which subsequent supplies must be held furnished.